

From: Mike Whalen
To: Microsoft ATR,attorney.general@state.mn.us@inetgw
Date: 11/7/01 12:08pm
Subject: MS Settlement

Dear Sirs,

I would like to register my displeasure with the settlement reached by the DOJ and Microsoft regarding their antitrust violations. What the 'settlement' provides is nothing more than carte blanche for Microsoft to continue its anti-competitive behavior; in fact, this settlement makes it more straightforward (and legal) for Microsoft to pursue this behavior than it was previously. To wit:

- Microsoft must allow applications & middleware onto the desktop that have distributed over 1 million copies and have been in business for greater than one year.

This clause allows large, established competitors to Microsoft to be used. However, what about new competitors? They will not be given the chance to be placed on the desktop. If such a clause was in place when companies like AOL were in their infancy, it would have been more difficult for them to reach their present size.

This clause does not help the companies that most need protection from Microsoft.

- Microsoft must disclose all new APIs to developers by the time of the last beta release of the operating system.

Ridiculous; you haven't defined a time window for the 'last beta'. Microsoft could release the last beta immediately before shipping the operating system.

- Microsoft must disclose all undocumented APIs to developers; however, if developers request this information, they must provide their source code back to a 3rd party approved by Microsoft.

As a developer, I wouldn't dream of giving Microsoft my source code; they have shown no compunction from stealing ideas from other companies and individuals.

The antitrust trial spelled this out in great detail. Therefore, this clause is completely ineffectual.

Besides, who is Microsoft going to approve as the third party?

- Microsoft does not need to disclose any APIs related to
 1. Security
 2. Anti-virus
 3. License enforcement

I can think of credible reasons why developers may need to know these APIs.

For Microsoft's upcoming .NET, a major portion of the API is related to security and authentication. In fact, it is central to any developer wanting to use .NET for future development of Windows products and services.

By spelling out these specific instances of 'violations', you allow Microsoft more latitude to continue its anticompetitive behavior, rather than less. Microsoft can credibly state that many of its APIs related to "back-end" services, such as COM+ and .NET services are related to security and authentication. These are the thrust of new development at microsoft, and access to these APIs is critical to producing successful new applications. Microsoft can also continue to discriminate against smaller, newer competitors, stifling innovative products and preventing them from being displayed on the desktop. Microsoft also has the ability to get at the source code(!) of any developer who requests information on their APIs. I believe that this will cow most, if not all, developers from requesting information; they would have to provide, in essence, their most valuable property in return: it is akin to giving away your most precious business plans to your largest and most aggressive competitor. What sane company would do so?

I urge you to reconsider this mistaken and shortsighted decision.

Thank you for your time,

:-) Mike Whalen
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